



Substitute Senate Bill No. 896

Public Act No. 15-233

***AN ACT CONCERNING PROTECTIVE SERVICES FOR
SUSPECTED ELDERLY ABUSE VICTIMS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17b-450 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

For purposes of sections 17b-450 to 17b-461, inclusive:

(1) The term "elderly person" means any resident of Connecticut who is sixty years of age or older.

(2) An elderly person shall be deemed to be "in need of protective services" if such person is unable to perform or obtain services which are necessary to maintain physical and mental health.

(3) The term "services which are necessary to maintain physical and mental health" includes, but is not limited to: [the] (A) The provision of medical care for physical and mental health needs, (B) the relocation of an elderly person to a facility or institution able to offer such care, (C) assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, (D) protection from health and safety hazards, (E) protection from [maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical

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punishment] abuse, neglect, exploitation or abandonment, and (F) transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in sections 17b-450 to 17b-461, inclusive.

(4) The term "protective services" means services provided by the state or other governmental or private organizations or individuals which are necessary to prevent abuse, neglect, exploitation or abandonment. [Abuse]

(5) The term "abuse" includes, but is not limited to, the wilful infliction of physical pain, injury or mental anguish, or the wilful deprivation by a [caretaker] caregiver of services which are necessary to maintain physical and mental health. [Neglect]

(6) The term "neglect" refers to the failure or inability of an elderly person [who is either living alone and not able] to provide for himself or herself the services which are necessary to maintain physical and mental health or [is not receiving such necessary services from the responsible caretaker. Exploitation] the failure to provide or arrange for provision of such necessary services by a caregiver.

(7) The term "exploitation" refers to the act or process of taking advantage of an elderly person by another person or [caretaker] caregiver whether for monetary, personal or other benefit, gain or profit. [Abandonment]

(8) The term "abandonment" refers to the desertion or wilful forsaking of an elderly person by a [caretaker] caregiver or the foregoing of duties or the withdrawal or neglect of duties and obligations owed an elderly person by a [caretaker] caregiver or other person.

[(5)] (9) The term ["caretaker"] "caregiver" means a person who has

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the responsibility for the care of an elderly person as a result of family relationship or who has assumed the responsibility for the care of the elderly person voluntarily, by contract or by order of a court of competent jurisdiction.

(10) The term "legal representative" means a guardian of a person with intellectual disability, conservator or power of attorney appointed to act on the elderly person's behalf.

Sec. 2. Section 17b-452 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

(a) The commissioner upon receiving a report that an elderly person allegedly is being, or has been, abused, neglected, exploited or abandoned, or is in need of protective services shall investigate the report to determine [the situation relative to] the condition of the elderly person and what action and services, if any, are required. The investigation shall include (1) [a] an in-person visit to the named elderly person, (2) consultation with those individuals having knowledge of the facts of the particular case, and (3) an interview with the elderly person alone unless (A) the elderly person refuses to consent to such interview, [(B) a physician, having examined the elderly person not more than thirty days prior to or after the date on which the commissioner receives such report, provides a written letter stating that in the opinion of the physician an interview with the elderly person alone is medically contraindicated, or (C)] or (B) the commissioner determines that such interview is not in the best interests of the elderly person. If the commissioner determines that a [caretaker] caregiver is interfering with the commissioner's ability to conduct an interview alone with the elderly person, the commissioner may bring an action in the Superior Court or Probate Court seeking an order enjoining such [caretaker] caregiver from interfering with the commissioner's ability to conduct an interview alone with the elderly person. In investigating a report under this subsection, the

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commissioner may subpoena witnesses, take testimony under oath and compel the production of any necessary and relevant documents necessary to investigate the allegations of abuse, neglect, exploitation or abandonment. The commissioner may request the Attorney General to petition the Superior Court for such order as may be appropriate to enforce the provisions of this section. Upon completion of the investigation, [written findings shall be prepared which] the commissioner shall prepare written findings that shall include recommended action and a determination of whether protective services are needed. [The person filing the report shall be notified of the findings, upon request.]

(b) The Department of Social Services shall maintain a state-wide registry of the number of reports received, the [investigation] allegations and [findings and the actions taken] the outcomes.

(c) The [client's file] elderly person's file, including, but not limited to, the original report and the investigation report shall not be deemed a public [records] record nor be subject to the provisions of section 1-210. [The name of the person making the original report or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests such disclosure or unless a judicial proceeding results therefrom or unless disclosure of the name of the elderly person about whom the report was made is required to fully investigate a report.] The commissioner may disclose the elderly person's file, in whole or in part, to an individual, agency, corporation or organization only with the written authorization of the elderly person, the elderly person's legal representative or as provided by this section.

(d) Notwithstanding the provisions of subsection (c) of this section, if the commissioner determines it to be necessary to assure the health, safety and welfare of an elderly person, the commissioner may disclose the elderly person's records, whether or not created by the department,

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and not otherwise privileged or confidential communications under state or federal law, without the authorization of the elderly person or the elderly person's legal representative (1) to multidisciplinary teams that may be formed to assist the department in investigation, evaluation or treatment of elderly abuse and neglect cases; (2) to law enforcement officials; and (3) in proceedings authorized under this chapter or in any action the commissioner deems necessary to assure the health, safety and welfare of any elderly person.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the commissioner shall not disclose the name of a person who reported suspected abuse, neglect, exploitation or abandonment of an elderly person except with that person's written permission or to a law enforcement official pursuant to a court order that specifically requires such disclosure.

(f) The elderly person or his or her legal representative or attorney shall have the right of access to records made, maintained or kept on file by the department, in accordance with all applicable state and federal law, when those records pertain to or contain information or material concerning the elderly person, including, but not limited to, records concerning investigations, reports or medical, psychological or psychiatric examinations of the elderly person except: (1) If protected health information were obtained by the department from someone other than a health care provider under the promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information; (2) that information identifying the individual who reported the abuse, neglect, exploitation or abandonment of the elderly person shall not be released unless, upon application to the Superior Court by the elderly person and served on the Commissioner of Social Services, a judge determines, after in camera inspection of relevant records and a hearing, that there is reasonable cause to believe the reporter knowingly made a false report

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or that other interests of justice require such release; (3) if it is determined by a licensed health care professional that the access requested is reasonably likely to endanger the life or physical safety of the elderly person or another person; (4) if the protected health information makes reference to another person, other than a health care provider, and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or (5) the request for access is made by the elderly person's legal representative, and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such legal representative is reasonably likely to cause harm to the elderly person or another person.

Sec. 3. Section 17b-453 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

(a) If it is determined that an elderly person is in need of protective services, services shall be initiated, provided the elderly person consents. If the elderly person fails to consent and the [protective services staff of the Department of Social Services] commissioner has reason to believe that such elderly person is incapable of managing his personal or financial affairs, the [protective services staff] commissioner shall provide protective services to the extent possible and may apply to Probate Court for the appointment of a conservator of person or estate, as appropriate.

(b) If the [caretaker] caregiver of an elderly person who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such elderly person, the [Commissioner of Social Services] commissioner may petition the Superior Court or the Probate Court for an order enjoining the [caretaker] caregiver from interfering with the provision of protective services to the elderly person. The petition shall allege

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specific facts sufficient to show that the elderly person is in need of protective services and consents to their provision and that the [caretaker] caregiver refuses to allow the provision of such services. If the judge finds that the elderly person is in need of such services and has been prevented by the [caretaker] caregiver from receiving the same, the judge may issue an order enjoining the [caretaker] caregiver from interfering with the provision of protective services to the elderly person.

Sec. 4. Section 17b-454 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

[Any person, department, agency or commission authorized to carry out the duties enumerated in sections 17b-450 to 17b-461, inclusive, shall have access to all relevant records, except that records which are confidential to an elderly person shall only be divulged with the written consent of the elderly person or the representative of such elderly person.] A covered entity, as defined in 45 CFR 160.103, shall disclose to the commissioner all relevant protected health information and other information about an elderly person that is necessary for the commissioner to investigate an allegation of abuse, neglect, exploitation or abandonment, provided the covered entity shall provide notice to such elderly person in accordance with subsection (c) of 45 CFR 164.512. If the [Commissioner of Social Services] commissioner has reasonable cause to believe that the elderly person [lacks capacity to give consent to release confidential records or if the caretaker of such elderly person is refusing consent and the commissioner has reasonable cause to believe that such caretaker has] is being abused, neglected, exploited or abandoned, [the elderly person,] the commissioner may issue a subpoena to obtain [confidential records] protected health information or other information necessary to investigate the allegations of abuse, neglect, exploitation or abandonment. The commissioner may request the

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Attorney General to petition the Superior Court for such order as may be appropriate to enforce the provisions of this section. The commissioner's authority [of the Department of Social Services] shall include, but shall not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any elderly person. [, subject to any specific requirement for individual consent, and the right to authorize the transfer of an elderly person from a nursing home.]

Sec. 5. Section 17b-455 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

If an elderly person does not consent to the receipt of reasonable and necessary protective services, or if such person withdraws the consent, such services shall not be provided or continued, except that if the [Commissioner of Social Services] commissioner has reason to believe that such elderly person lacks capacity to consent, [he] the commissioner may seek court authorization to provide necessary services, as provided in section 17b-456, as amended by this act.

Sec. 6. Section 17b-456 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

(a) If the Commissioner of Social Services finds that an elderly person is being abused, neglected, exploited or abandoned and lacks capacity to consent to reasonable and necessary protective services, [he] the commissioner may petition the Probate Court for appointment of a conservator of the elderly person pursuant to the provisions of sections 45a-644 to 45a-662, inclusive, in order to obtain such consent.

(b) Such elderly person or the individual, agency or organization designated to be responsible for the personal welfare of the elderly person shall have the right to bring a motion in the cause for review of the Probate Court's determination regarding the elderly person's

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capacity or an order issued pursuant to sections 17b-450 to 17b-461, inclusive, as amended by this act.

(c) The Probate Court may appoint [, if it deems appropriate,] the Commissioner of Social Services to be the conservator of the person of such elderly person pursuant to the provisions of section 45a-651.

(d) In any proceeding in Probate Court pursuant to the provisions of sections 17b-450 to 17b-461, inclusive, as amended by this act, the Probate Court shall appoint an attorney to represent the elderly person if he or she is without other legal representation.

Sec. 7. Section 17b-459 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

Concurrent with the implementation of any protective services, an evaluation shall be undertaken by the Department of Social Services, pursuant to regulations [which] that shall be adopted by the Commissioner of Social Services, in accordance with chapter 54, regarding the elderly person's financial capability for paying for the protective services. If the elderly person is so able, procedures for the reimbursement for the costs of providing the needed protective services shall be initiated. If it is determined that the elderly person is not financially capable of paying for such needed services, the services shall be provided in accordance with policies and procedures established by the Commissioner of Social Services for the provision of welfare benefits under such circumstances.

Sec. 8. Section 17b-460 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

If, as a result of any investigation initiated under the provisions of sections 17b-450 to 17b-461, inclusive, as amended by this act, a determination is made that a [caretaker] caregiver or other person has abused, neglected, exploited or abandoned an elderly person, such

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information shall be referred in writing to the Chief State's Attorney or the Chief State's Attorney's designee who shall conduct such further investigation, if any, as deemed necessary and shall determine whether criminal proceedings should be initiated against such [caretaker] caregiver or other person, in accordance with applicable state law.

Sec. 9. (NEW) (*Effective July 1, 2015*) (a) The Commissioner of Social Services may petition the Probate Court for an order to enter the premises of an elderly person for purposes of an assessment when the commissioner has reasonable cause to believe that the elderly person may be in need of protective services and is refused access by the elderly person or another individual.

(b) The commissioner shall document in the Department of Social Service's investigation file the factors considered when making the decision about whether to petition for an order to enter the premises.

(c) The commissioner shall state in the petition for an order to enter the premises that the order is being sought solely for the purpose of assessing whether the elderly person is in need of protective services and shall include, to the extent the facts can be ascertained with reasonable diligence, the following information:

(1) The name and address of the elderly person who may be in need of protective services and the premises on which this person may be found, if different;

(2) The reason for the belief that the elderly person may be in need of protective services, which may include information provided by other agencies or individuals who are familiar with the elderly person;

(3) The name and address, if known, of the individual or individuals who are responsible for preventing access to the elderly person;

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(4) Previous efforts that have been made to enter the premises of the elderly person who may need protective services;

(5) The names of any individuals, such as the department's social worker, and any other health or mental health professionals, who may participate in the assessment of whether the elderly person needs protective services;

(6) The manner by which the assessment will be conducted; and

(7) Whether there has been a prior petition to the Probate Court to enter the premises of the elderly person, or for any similar relief, and, if so, the determination of such petition, and new facts, if any, that were not in the previous petition, which support submission of another petition.

(d) Any allegations of abuse, neglect, exploitation or abandonment that are not based on the commissioner's personal knowledge shall be based on the personal knowledge of the person reporting the abuse, neglect, exploitation or abandonment or the personal knowledge of any other person who has information relating to the report. Whenever possible, the allegations that are not based on the commissioner's knowledge shall be supported by an affidavit under penalty of perjury of the person having such knowledge and shall be attached to the petition.

(e) If the Probate Court finds that (1) there is reasonable cause to believe that an elderly person is at risk of imminent physical or mental harm and may be found at the premises described in the petition, (2) such person may be in need of protective services, and (3) access to such person has been refused, the court shall grant the petition and issue an order, ex parte and without prior notice, authorizing the commissioner, accompanied by a police officer or other law enforcement official, and any other person the commissioner

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determines necessary to enter the premises to conduct an assessment to determine whether the elderly person named in the petition is in need of protective services. The ex parte order shall expire ten days after the order is issued.

(f) The provisions of this section shall not be construed to authorize the commissioner to remove any person from the premises described in the petition, or to provide any involuntary protective services to any person, other than to assess an elderly person's need for protective services. Nothing in this section shall be construed to impair any existing right or remedy under law for any person subject to the provisions of this section.

Approved July 2, 2015